

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
MONDAY, MAY 24, 1999**

1

At 9:29 A.M., THE COURT MET IN THE Library & Courts Building for a continuation of its court calendar session.

PRESENT: NICHOLSON, Acting Presiding Justice
 HULL, Associate Justice
 KOLKEY, Associate Justice

Bailiff: Palmer
Calendar called.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
MONDAY, MAY 24, 1999 CONTINUED**

2

Crim. THE PEOPLE
No. v.
C029704 GRAHAM JOHN CORNS

Cause called. Michael Gottschalk argued for Defendant-Appellant. Alison Elle Aleman, Deputy Attorney General argued for Plaintiff-Respondent. Cause submitted.

At 9:50 a.m., court recessed. At 9:54 a.m., court reconvened with Acting Presiding Justice Sims, Associate Justice Callahan and Associate Justice Kolkey.

Juvenile In re CANERIB R., a Person Coming Under the Juvenile Court Law.
No. v.
C029455 DEPARTMENT OF HEALTH AND HUMAN SERVICES
v.
MARY R.

Cause called. Gary Simms, court appointed counsel argued for Defendant-Appellant. Lilly C. Frawley, Deputy County Counsel argued for Plaintiff-Respondent. Cause submitted.

At 10:17 a.m., court recessed. At 10:20 a.m., court reconvened with Acting Presiding Justice Sims, Associate Justice Raye and Associate Justice Callahan.

Crim. THE PEOPLE
No. v.
C028898 ISAIAS RODRIGUEZ POSAS

Cause called. Catherine C. Czar, court appointed counsel argued for Defendant-Appellant. Laura Wetzel Simpton, Deputy Attorney General argued for Plaintiff-Respondent. Cause submitted.

Court adjourned at 10:40 a.m., until 9:30 a.m., Monday June 21, 1999.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
MONDAY, MAY 24, 1999 CONTINUED**

3

Crim. THE PEOPLE (Not for Publication)
No. v.
C030920 MATT WAYNE LAWSON

The judgment is affirmed.

Sims, Acting P.J.

We concur: RAYE, J.
CALLAHAN, J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C029686 AGUSTIN J. YBARRO

The judgment is modified by striking the two restitution fines imposed in case No. 93F04034. As modified, The judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment in accordance with this disposition and to forward it to the Department of Corrections.

MORRISON, J.

We concur: DAVIS, Acting P.J.
CALLAHAN, J.

Civil OZELLA HALEY et al (Certified for Publication)
No. v.
C029377 DOW LEWIS MOTORS, INC. et al.

The judgment is reversed. The matter is remanded with instructions to enter an order granting the motion for judgment on the pleadings with leave to amend only as to the causes of action accruing before May 3, 1995. The order shall provide a reasonable time in which plaintiff may secure either the bankruptcy trustee's participation in, or abandonment of, these causes of action. Plaintiff shall recover their costs on appeal.

MORRISON, J.

We concur: BLEASE, Acting P.J.
RAYE, J.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
MONDAY, MAY 24, 1999 CONTINUED**

4

Crim. THE PEOPLE (Certified for Partial Publication)
No. v.
C028319 JEFFREY PATTERSON

Defendant's conviction and sentences are affirmed, except that the sentences imposed on counts II, III, and V, are hereby stayed pursuant to section 654. The trial court shall furnish a certified copy of a corrected abstract of judgment to the Department of Corrections.

(CERTIFIED FOR PARTIAL PUBLICATION)

SIMS, Acting P.J.

We concur: DAVIS, J.
RAYE, J.

Civil NEVADA COUNTY COUNCIL ON ALCOHOLISM, INC. et al.
No. v. (Not for Publication)
C028519 PHILADELPHIA INDEMNITY INSURANCE COMPANY

The judgment is reversed and the matter remanded with directions to enter a new order denying the defendant insurer's motion for summary judgment. The plaintiffs shall recover costs of appeal.

DAVIS, J.

We concur: SIMS, Acting P.J.
RAYE, J.

TUESDAY, MAY 25, 1999

Crim. THE PEOPLE
No. v.
C026990 CHARLES JOHN TRAUTWEIN
BY THE COURT:

Appellant's petition for rehearing is denied.

Dated: May 25, 1999

SCOTLAND, P.J.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
TUESDAY, MAY 25, 1999 CONTINUED**

5

Crim. THE PEOPLE
No. v.
C030096 JAMES DONALD ROOT
BY THE COURT:

Appellant's petition for rehearing is denied.

Dated: May 25, 1999

SCOTLAND, P.J.

Crim. THE PEOPLE
No. v.
C030289 STEPHEN ANTHONY WORTHAM

The judgment is affirmed.

MORRISON, J.

I concur: SIMS, Acting P.J.

I concur in the majority opinion. Special care should be taken in reviewing a n appeal from a denial of a motion for a new trial based on a purported confession from someone other than the defendant. After all, a confession is a unique form of evidence which has the potential of altering a jury verdict. I write separately to emphasize that the outcome of this appeal is dictated by the standard of review on appeal.

...

KOLKEY, J.

Civil TIMOTHY RANK et ux (Not for Publication)
No. v.
C29721 KENJI'S LANDSCAPE

The judgment against Rank is reversed. Rank shall recover costs on appeal.

MORRISON, J.

We concur: BLEASE, Acting P.J.
HULL, J.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
TUESDAY, MAY 25, 1999 CONTINUED**

6

Crim. THE PEOPLE (Not for Publication)
No. v.
C028517 GLEN WARREN WOODHOUSE

The judgment is affirmed.

CALLAHAN, J.

We concur: BLEASE, Acting P.J.
RAYE, J.

Crim. THE PEOPLE (Not for Publication)
No. .v.
C027314 DOMINIC DAMON PALACIO

The judgment is affirmed.

CALLAHAN, J.

We concur: SIMS, Acting P.J.
NICHOLSON, J.

Civil WILSON CURLE, a Judge of the Superior Court
No. v. (Certified for Publication)
C031822 SUPERIOR COURT OF SHASTA COUNTY
ANDREW MADISON GLEASON, PEOPLE OF THE STATE OF
CALIFORNIA

Let a peremptory writ of mandate issue directing respondent superior court to vacate its order disqualifying Judge Curle from further participation in Shasta County case number 98F1725, and a new order denying defendant's statement of disqualification. The alternative writ discharged. (CERTIFIED FOR PUBLICATION)

BLEASE, Acting P.J.

We concur: NICHOLSON, J.
MORRISON, J.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
TUESDAY, MAY 25, 1999 CONTINUED**

7

Civil REUBEN G. DOWNING (Not for Publication)
No. v.
C031299 WORKERS' COMPENSATION APPEALS BOARD LASSEN GOLD ,
INC. et al.

The decision of the Board is annulled and the matter is remanded to the Board for further proceedings consistent with the views expressed in this opinion.

BLEASE, Acting P.J.

We concur: DAVIS, J.
 MORRISON, J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C029506 KELLY LEE SCHERER

The sentence is vacated and the matter is remanded for resentencing to permit the trial court to exercise its discretion as to whether to impose concurrent or consecutive sentences, and to recalculate defendant's presentence custody credit. In all other respects the judgment is affirmed.

MORRISON, J.

We concur: DAVIS, Acting P.J.
 CALLAHAN, J.

Civil RAY GLADEBOE LINCOLN-MERCURY, INC.
No. v.
C028067 NEW MOTOR VEHICLE BOARD
FORD MOTOR COMPANY etc.

Civil FORD MOTOR COMPANY etc.
No. v.
C028849 NEW MOTOR VEHICLE BOARD
RAY FLADEBOE LINCOLN-MERCURY, Inc.

The judgment is affirmed. Each party shall bear its own costs in case No. C028067 and case No. C028849.

CALLAHAN, J.

We concur: SIMS, Acting P.J.
 HULL, J.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
TUESDAY, MAY 25, 1999 CONTINUED**

8

Civil AMBER GARCIA, a Minor, etc. et al.

No. v.

C028902 SNAP PRODUCTS, Inc. et al.
TECHNICAL CHEMICAL COMPANY

The judgment is affirmed. Technical is ordered to pay Snap's costs on appeal.

MORRISON, J.

We concur: BLEASE, Acting P.J.
RAYE, J.

Civil RICHARD WHITE (Not for Publication)

No. v.

C028238 CALIFORNIA STATE LOTTERY COMMISSION
(The judgment is affirmed.)

CALLAHAN, J.

We concur: SCOTLAND, P.J.
MORRISON, J.

Juvenile In re AUBREY W. et al., Persons Coming Under the Juvenile Court Law.

No. DEPARTMENT OF HEALTH AND HUMAN SERVICES

C031024 v.

VALERIA W.

The orders of the juvenile court are affirmed.

BLEASE, Acting P.J.

We concur: RAYE, J.
KOLKEY, J.

WEDNESDAY, MAY 26, 1999

Crim. THE PEOPLE (Not for Publication)

No. v.

C029857 SAMUEL ALLEN HEATH

The judgment is affirmed.

MORRISON, J.

We concur: DAVIS, Acting P.J.
CALLAHAN, J.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
WEDNESDAY, MAY 26, 1999 CONTINUED**

9

Civil HAROLD R. FARROW et al (Not for Publication)
No. v.
C026090 OMER L. RAINS

The judgment is affirmed. The parties shall bear their own costs of
this appeal.

BLEASE, Acting P.J.

We concur: DAVIS, J.
 RAYE, J.

Civil LILLIE R. MURPHY (Not for Publication)
No. v.
C027805 REGENTS OF THE UNIVERSITY OF CALIFORNIA.

The judgment is affirmed.

SCOTLAND, P.J.

We concur: BLEASE, J.
 MORRISON, J.

Juvenile ROSIE R. (Not for Publication)
No. v.
C032160 SUPERIOR COURT SERVICES OF SISKIYOU COUNTY
 CHILD PROTECTIVE SERVICES et al.

The petition and request for a stay are denied.

SCOTLAND, P.J.

We concur: DAVIS, J.
 KOLKEY, J.

Juvenile ANDREA W. et al. (Not for Publication)
No. v.
C031984 SUPERIOR COURT OF SANJOAQUIN COUNTY
 HUMAN SERVICES AGENCY et al.

The petition and request for a stay are denied.

Scotland, P.J.

We concur: DAVIS, J.
 KOLKEY, J.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
WEDNESDAY, MAY 26, 1999 CONTINUED**

10

Crim. THE PEOPLE (Not for Publication)
No. v.
C030735 FRANCISCO FREGOSO et al.
The judgment (orders granting probation)are affirmed.
MORRISON, J.
We concur: DAVIS, Acting P.J.
CALLAHAN, J.

Crim. THE PEOPLE (Not for Publication)
No. v
C022776 JAINE PADILLA JR
The judgment is affirmed.
Nicholson, Acting P.J.
We concur: RAYE, J.
HULL, J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C029334 MELVIN EDWARD PAPE
The judgment is affirmed.
SCOTLAND, P.J.
We concur: SIMS, J.
MORRISON, J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C030939 ROCKY ERIC SHELTON
The judgment is affirmed.
SIMS, Acting P.J.
We concur: NICHOLSON, J.
MORRISON, J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C029526 EDDIE RIVERA
The judgment is affirmed.
HULL, J.
We concur: BLEASE, Acting P.J.
RAYE, J.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
WEDNESDAY, MAY 26, 1999 CONTINUED**

11

Crim. THE PEOPLE (Not for Publication)
No. v.
C027457 VASHON JACKSON

The judgment is affirmed.

MORRISON, J.

We concur: RAYE, Acting P.J.
CALLAHAN, J.

Crim. THE PEOPLE (The judgment is affirmed.)
No. v.
C030979 MANUEL RAMON WASHINGTON

The judgment is modified to include a \$600 parole fine pursuant to section 1202.45, suspended unless defendant violates his parole. As modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment reflecting this modification and to forward a certified copy of the amended abstract to the Department of Corrections.

SCOTLAND, P.J.

We concur: NICHOLSON, J.
HULL, J.

Juvenile In re AMBER G., a Person Coming Under the Juvenile Court Law.
No. CHILD PROTECTIVE SERVICES
C029832 v. (Not for Publication)
AMBER G.

The order terminating the dependency status of Amber is affirmed.

BLEASE, Acting P.J.

We concur: DAVIS, J.
NICHOLSON, J.

12

We concur: SIMS, Acting P.J.
 RAYE, J.

13

Crim. THE PEOPLE (Not for Publication)
No. v
C027160 BILL LEE COX

The judgment is affirmed.

RAYE, J..
We concur: BLEASE, Acting P.J.
HULL, J.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
THURSDAY, MAY 27, 1999**

14

Crim. THE PEOPLE (Not for Publication)
No. v.
C030425 MACEO MACKINNEY, JR.R

The judgment is affirmed.

BLEASE, Acting P.J.

We concur: NICHOLSON, J.
 MORRISON, J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C029279 EDWARD JOHN SOARES

The judgment is affirmed.

NICHOLSON, Acting P.J.

We concur: MORRISON, J.
 KOLKEY, J.

Civil PLACER RANCH, INC.
No. v.
C029206 WESTERN PLACER WASTE MANAGEMENT AUTHORITY

The order denying disqualification is affirmed.

BLEASE, Acting P.J.

We concur: MORRISON, J.
 HULL, J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C028108 DAVID RAYMOND GATES

The judgment is affirmed.

HULL, J.

We concur: DAVIS, Acting P.J.
 RAYE, J.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
THURSDAY, MAY 27, 1999 CONTINUED**

15

Crim. THE PEOPLE (Not for Publication)
No. v.
C028700 JON BRAIN RIDLEY

The judgment is reversed insofar as defendant was found guilty of assault with a deadly weapon other than a firearm. In all other respects the judgment is affirmed.

RAYE, J.

We concur: SIMS, Acting P.J.
 DAVIS, J.

FRIDAY, MAY 28, 1999

Crim. THE PEOPLE (Not for Publication)
No. v.
C029336 JOSHUA JONES
 In re JOSHUA MARK JONES

The judgment is affirmed. The petition for writ of habeas corpus is dismissed.

NICHOLSON, Acting P.J.

We concur: MORRISON, J.
 KOLKEY, J.

Juvenile In re DAVID B., a Person Coming Under the Juvenile Court Law.
No. THE PEOPLE (Not for Publication)
C030675 v.
 DAVID B.

The judgment (order committing the minor to the Youth Authority) is affirmed.

NICHOLSON, J.

We concur: SCOTLAND, P.J.
 CALLAHAN, J..

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
FRIDAY, MAY 28, 1999 CONTINUED**

16

Civil EDGAR PACE (Not for Publication)
No. v.
C023105 SACRAMENTO MUNICIPAL UTILITY DISTRICT
C024117

The judgment of dismissal and the order denying the motion to vacate the judgment of dismissal are affirmed.

SCOTLAND, P.J.

We concur: BLEASE, J.
 SIMS, J.

Crim. THE PEOPLE (Certified for Partial Publication)
No. v.
C028314 JIMMY RAY HEARON

The judgment is affirmed.

SCOTLAND, P.J.

We concur: SIMS, J.
 MORRISON, J.

Civil GHANSHYAM PATEL et al. (Not for Publication)
No. v.
C025518 RULOBO ENTERPRISES, INC.

The judgment is affirmed.

HULL, J.

We concur: SIMS, Acting P.J.
 RAYE, J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C028142 SCOTT PHILLIP HOCKEY

The judgment is affirmed.

DAVIS, J.

We concur: SCOTLAND, P.J.
 SIMS, J.

17

We concur: MORRISON, J.
KOLKEY, J.